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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/719,786

11/21/2003

Edward Paul Carlin

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2939

27752

7590

05/02/2006

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EXAMINER

BOGART, MICHAEL G

ART UNIT

PAPER NUMBER

3761

DATE MAILED: 05/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/719,786	Applicant(s) CARLIN, EDWARD PAUL	
	Examiner Michael G. Bogart	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4-7,9-11,13,14,16 and 18-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4-7,9-11,13,14,16 and 18-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 February 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Withdrawal of Allowability

The indicated allowability of claims 3-7 and 16 is withdrawn in view of the newly discovered reference(s) to Schoelling (US 2001/0014348 A1 and US 2002/0151859 A1).

Rejections based on the newly cited reference(s) follow.

Claim Rejections – 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5-7, 9-11, 13, 14, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schoelling (US 2001/0014348 A1).

Regarding claim 13, Schoelling teaches a tampon (10) for feminine hygiene comprising an insertion end (14), a withdrawal end (16), a length, a longitudinal axis, a radial axis, and an outer surface (22);

said tampon (10) being comprised of compressed fibrous material (¶'s 0011; 0012; 0034; 0036);

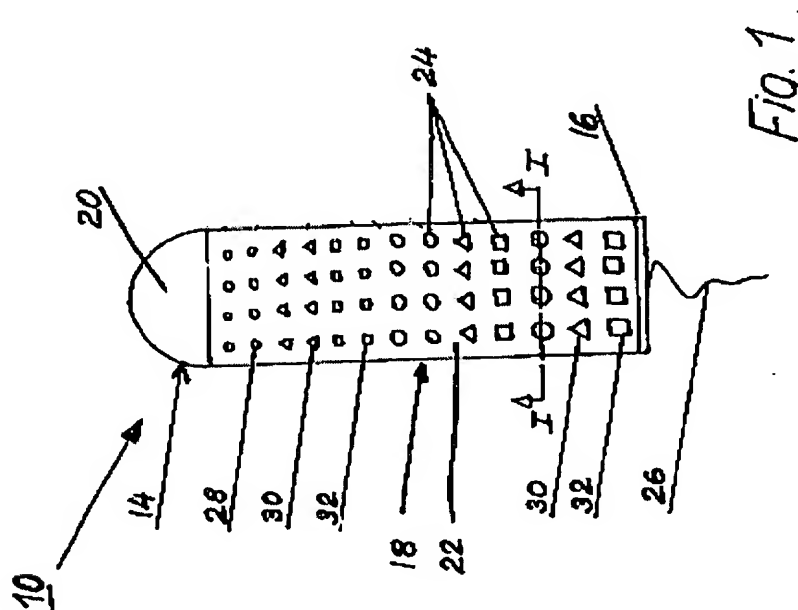
wherein a measured portion of said outer surface of said insertion end (14) comprises a first surface area and a measured portion of said outer surface of said withdrawal end (16) comprises a second surface area, said first surface area being different than said second surface

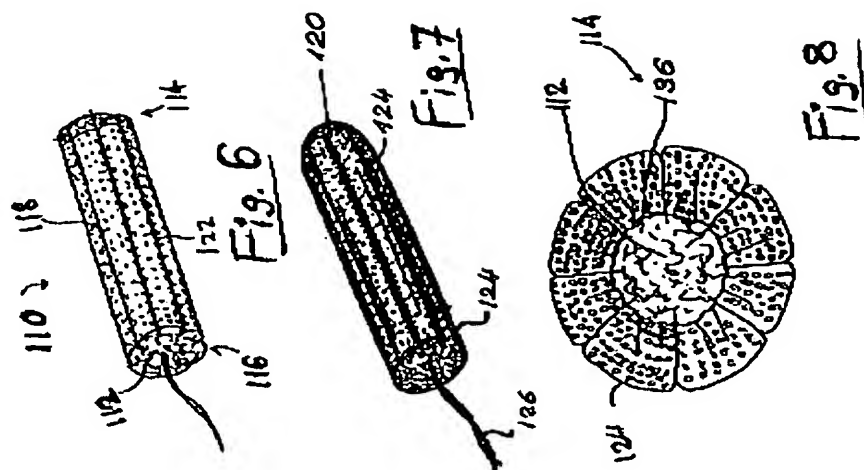
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area, wherein at least a portion of said first surface area comprises grooves, wherein said grooves are selected from the group consisting of longitudinal grooves, horizontal grooves and mixtures thereof (see figures 1 and 6-8, below), wherein at least a portion of the first surface area further comprises surface aberrations (28).

Schoelling is silent as to the specific length of the grooves.

Mere changes in relative size or proportion are not sufficient to patentably distinguish a claimed invention from the prior art. In *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), *cert. denied*, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device. MPEP § 2144.04.





Regarding claims 5 and 6, Schoelling teaches a straight line or checkerboard pattern of evenly spaced surface aberrations (28)(figure 1).

Regarding claims 9-11, Schoelling teaches grooves arranged in an evenly spaced straight line pattern (figures 6-8).

Regarding claim 14, Schoelling teaches longitudinal grooves (figures 6-8).

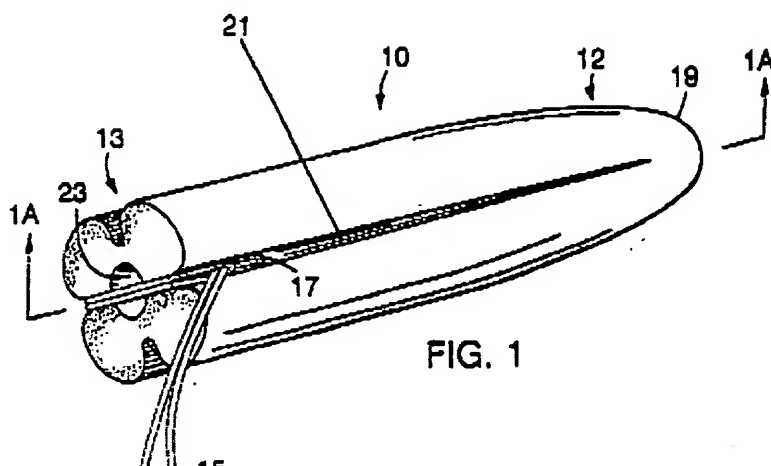
Regarding claim 18, Schoelling teaches an essentially uniform density (figure 8).

Regarding claim 19, Schoelling teaches that the entire tampon including the core is highly compressed (§'s 0011; 0012; 0034).

Claim 20 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Schoelling as applied to claims 5-7, 9-11, 13, 14, 18 and 19 above, in view of Child *et al.* (US 6,283,952 B1).

Schoelling does not disclose a thumb indent at the withdrawal end of a tampon.

Child *et al.* teach a tampon (10) having an indent (23) at its withdrawal end (13)(see figure 1, below).



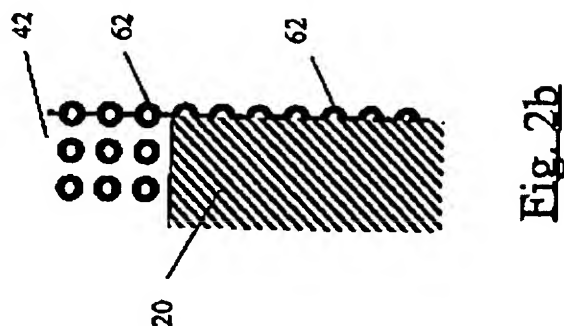
At the time of the invention, it would have been obvious to one of ordinary skill in the art to add the indent of Child *et al.* to the tampon of Schoelling in order to provide a means of facilitating insertion of the device into a patient with a thumb or finger.

Claim 4 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Schoelling as applied to claims 5-7, 9-11, 13, 14, 18 and 19 above, and further in view of Kraemer *et al.* (US 2002/0120243 A1).

Schoelling does not teach protuberances.

Kraemer *et al.* teach a tampon having protuberances (62) on its surface (figure 2b, below). These protuberances add to the frictional coefficient of the tampon, which aids in reliable positioning of the device (§ 0067).

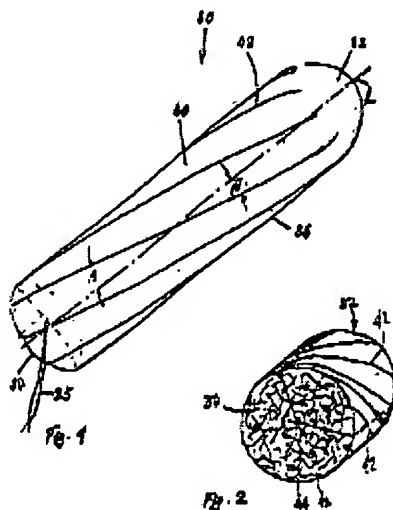
At the time of the invention, it would have been obvious to one of ordinary skill in the art to add the protuberances of Kraemer *et al.* to the tampon of Schoelling in order to facilitate positioning of the tampon.



Claim 16 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Schoelling in view of Schoelling (US 2002/0151859 A1; hereinafter '859).

Schoelling does not teach horizontal grooves.

'859 teaches that said grooves comprise horizontal grooves. The basis for this interpretation is that the ribs have a spirally extending pattern that extends in both the longitudinal direction and the horizontal direction. The spiral shape allows for improved liquid absorption (§ 0010)(figures 1 and 2, below).



At the time of the invention, it would have been obvious to one of ordinary skill in the art to select the spirally extending grooves of '859 for use in the tampon of Schoelling in order to provide for improved liquid absorption.

Conclusion

Applicant's submission of an information disclosure statement under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) on 02 February 2006 prompted the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 609.04(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (571) 272-4933.

In the event the examiner is not available, the Examiner's supervisor, Tatyana Zalukaeva may be reached at phone number (571) 272-1115. The fax phone number for the organization

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where this application or proceeding is assigned is (571) 273-8300 for formal communications.

For informal communications, the direct fax to the Examiner is (571) 273-4933.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michael Bogart
25 April 2006

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

